 UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,814	01/05/2001	Brian Gerard Goodman	TUC920000052US1	5411

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EXAMINER
YANCHUS III, PAUL B

ART UNIT	PAPER NUMBER
2116	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/755,814	GOODMAN ET AL.
	Examiner	Art Unit	
	Paul B Yanchus	2116	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *03 May 2004*.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-63* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☐ Claim(s) *1-10,17-27,34-44,51-54,56-58 and 60-62* is/are rejected.

7) ☒ Claim(s) *11-16,28-33,45-50,55,59 and 63* is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *03 May 2004* is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date *3/9/04*.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

This non-final office action is in response to communications filed on 5/3/04.

Allowable Subject Matter

Claims 11-16,28-33,45-50,55,59 and 63 are objected to as being dependent upon a

rejected base claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10, 17-27, 35-44, 51-54, 56-58 and 60-62 are rejected under 35 U.S.C. 103(a)

as being unpatentable over Fiske, US Patent no. 6,324,692[1], in view of Smith, US Patent no.

5,949,997.

Regarding claims 1, 7 and 54, Fiske teaches a method for selecting a code image,

comprising:

maintaining multiple code images in a memory device [new program and current

program];

executing a first operation routine [reboot];

incrementing a first counter if the first operation routine succeeds [reboot counter];

executing a second operation routine [reboot driver];

incrementing a second counter if the second operation routine succeeds [setting flag]; and

using the first and second counters to select one of the code images from the memory

device to execute [Figure 2 and column 3, line 55 – column 4, line 39].

Fiske teaches deciding whether to execute a new version of a program or a current

version of the program. After the new version of the program is installed, the system is rebooted.

After reboot, a reboot driver is then executed to determine if the system is configured as

expected. If the system is configured as expected, a flag is set and the new version of the

program proceeds to be executed. Setting a flag value is essentially equivalent to incrementing a

counter from 0 to 1. If the system is not configured as expected the flag value is not set and a

reboot counter is incremented. The reboot counter keeps track of the number of times the system

has rebooted since the system was last configured correctly. If the reboot counter reaches a

threshold, the system determines that the new version of the program is non-operable and reverts

back to the previously installed program [Figure 2 and column 3, line 55 – column 4, line 39].

Fiske does not explicitly teach performing the code selecting method during a reboot

routine. Smith teaches a method of selecting a code image used for booting a microprocessor

[column 6, lines 50-65]. The method is performed during a reboot routine since it selects a boot

code image.

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[1] see office action dated 12/4/03

It would have been obvious to one of ordinary skill in the art to perform the code

selecting method taught by Fiske during a reboot routine, as taught by Smith, in order to ensure

that a computer will be able to successfully boot even if a boot code image becomes non-

operable.

Regarding claim 2, Fiske teaches designating the new version of the program non-

operational when the reboot counter reaches a threshold and the flag is not set [column 4, lines

10-34].

Regarding claim 3, Fiske teaches that the reboot counter is incremented until it reaches a

certain threshold. Therefore the reboot counter would have to hold a value be greater than zero.

Fiske teaches that the flag is not set (or has a zero value) when the system configuration is not in

an expected state [column 4, lines 10-34].

Regarding claim 4, Smith teaches replacing a code image when it is determined to be

non-operational [column 6, lines 50-65].

Regarding claim 5, it would have been obvious to one of ordinary skill in the art to

overwrite an older version of a code image if both code images are operational because newer

versions of programs normally provide improved functionality over older versions.

Regarding claim 6, Smith teaches replacing a code image when it is determined to be

non-operational. When a code image becomes corrupted it becomes non-operational. Therefore

Smith teaches replacing a corrupted code image since the corrupted code image will be non-

operational.

Regarding claim 8, Fiske teaches setting a flag when the system configuration is

determined to be in an expected state. Setting a flag is essentially incrementing the value from a

0 to a 1. Fiske also teaches rebooting and repeating the process if the system configuration is not in an expected state [Figure 2 and column 3, line 55 – column 4, line 39].

Regarding claims 9 and 10, Smith teaches teaches selecting an updated version of a code image if it operational and error free and selecting an older version of the code image when the updated version is non-operational [column 6, lines 50-65].

Regarding claim 17, Smith teaches that one of the operation routines is a reboot routine [column 6, lines 50-65]

Regarding claims 52 and 53, Fiske and Smith, as described above, teach that the code image selecting method is carried out during a reboot operation. Fiske and Smith do not explicitly teach where the counter logic and code selection logic are located. However, it is well known in the art that operations that are performed by using hardware can also be performed by using software and operations that are performed by using software can also be performed by using hardware.

Regarding claims 18-28, 34 and 56-58, Fiske and Smith teach a method for selecting a code image during a reboot routine, as described above. Therefore, Fiske and Smith also teach a system which performs the method.

Regarding claims 35-44, 51 and 60-62, Fiske and Smith teach a method for selecting a code image during a reboot routine, as described above. Therefore, Fiske and Smith also teach an article of manufacture, which performs the method.

Response to Arguments

Applicant's arguments with respect to claims 1-10,17-27,34-44 and 51 have been

considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with respect to claims 11-16, 28-33 and 45-50 have been fully

considered and are persuasive. The rejection of 11-16, 28-33 and 45-50 has been withdrawn.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Paul B Yanchus whose telephone number is (703) 305-8022. The

examiner can normally be reached on Mon-Thurs 8:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Lynne H Browne can be reached on (703) 308-1159. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Yanchus
June 24, 2004

LYNNE H. BROWNE
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